IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9965 OF 2004

Hindustan Lever Employee's Union ...Petitioner

Versus

Hindustan Lever Ltd. and Ors. ...Respondents

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Mr. Sudhir Talsania with Smt. Nandini G. Menon, counsel for Petitioner

Mr. J.P. Cama with C.U. Singh with R.N. Shah with Sanjay Udeshi i/b M/s Sanjay Udeshi & Co. for Respondent No.1.

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CORAM: B. H. MARLAPALLE, J.

DATED: 18TH JANUARY, 2005

P.C.:-

1. Heard Mr. Talsania with Smt. Nandini Menon, learned counsel for the Petitioner Union and Mr. Cama, learned senior counsel with Mr. Sanjay Udeshi for Respondents.

2. Being aggrieved by the order passed by the Industrial Court rejecting the application for interim relief at Exh. U-2 on 27.10.2004 in complaint (ULP) No. 161 of 2004, the Union has approached this Court and prays for interim protection to the seven workmen whose names were set out in the application itself.

3. The Industrial Court in the impugned order noted that the main complaint filed under Items No. 1 and 5 of Schedule II and Items No. 2,3, 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 (for short "the Act"), challenged the closure and consequently the notice of termination dated 8.6.2004 issued by the respondent Company in respect of its factory located at Plot No.6, M.I.D.C. Industrial Estate, Taloja, District Raigad. It appears that till the month of May, 2004 the said factory was employing about 118 workmen and 111 of them opted for the voluntary retirement scheme offered by respondent company, thus, leaving seven employees on the rolls of the factory, consequently the notice dated 8.6.2004 was issued. The petitioner Union claimed that this action of respondents was in violation of mandate of section 25 O of the Industrial Dispute Act, 1947 (for short "ID Act"), and therefore, the consequences of section 25 O (6) must follow. Whereas the company claims that the notice dated 8.6.2004 was issued under section 25 FFA(1), proviso (a) (I) of the ID Act. Thus, the main issue which falls for consideration in the complaint filed by the petitioner Union is whether the action of closure invites provisions of section 25 O or section 25 FFA proviso of the ID Act and these issues will have to be decided by the Industrial Court during the trial

of the complaint.

4. In the impugned order, the Industrial Court has referred to a host of decisions of this Court as well as the Supreme Court, and recorded the finding that prima facie, the act of the company in issuing notice dated 8.6.2004 did not amount to an act of Unfair Labour Practice under any of the Items alleged by the petitioner Union and the seven workmen did not suffer an irreparable loss. The Industrial Court has noted that the loss if any, can be cured in the final order and allowing the application for interim relief would amount to directing the company to re-open the factory which was already closed. It also held that the provisions of section 25 FFA proviso (a) (I) of the ID Act applied to the instant case.

5. The application at Exh.U-2 as filed by the petitioner Union sets out the following prayers:-

(A) Direct the Respondents to withdraw temporarily the unfair labour practices complained of;

(B) Direct the Respondents to either employ or pay regular wages and benefits as if

continued in service from month to month and arrears thereof with effect from 8th of June 2004 to each of the following 7 employees -

(1)	Mr. K.N. Gondhali	Token No. 120
(2)	Mr. B.R. Mane	Token No. 153
(3)	Mr. M.M. Shewale	Token No. 151
(4)	Mr. G.D. Khetam	Token No. 444
(5)	Mr. K.D. Patil	Token No. 301
(6)	Mr. N.S. Patil	Token No. 337
(7)	Mr. L.B. Mali	Token No. 113

(C) In case, pursuant to the interim order the said 7 employees are taken back in the employment, restrain the Respondents from transferring any of the said 7 employees to any other Establishment;

(D) Restrain the respondents from selling and/or creating any third party rights or interest in the land on which Taloja factory is situated and from transferring the Plant and Machinery therefrom any make ex-parte order to that effect;

6. There is no dispute that on the day when the complaint was filed before the Industrial Court the closure as well as the termination of service of seven workmen was already effected and they were offered the legal dues. The Industrial Court referred to a Single Bench decision of this Court in the case of **M/s. Vidarbha Engineering Industries Vs. Member, Industrial Court, 1986, I-Bom C.R. 66** and noted that prayer clauses (B) and (C) as set out in the application for interim relief could not be granted. So far as the prayer clause (D) is concerned, the restraining orders as prayed for could not be considered unless it was made out that the legal dues payable to the workmen were not offered or not paid.

7. Mr. Talsania, the learned counsel in his lengthy arguments urged before this Court that to protect the interests of the workmen on the face of apparent illegality committed by the respondent by violating the provisions of section 25 O of the ID Act, the workmen are required to be protected either by offering them alternative employment in any other establishment of respondent No.1 company or by directing payment of their monthly salary till the main complaint is decided on merits. As per the settled legal position, this Court while entertaining the petition under article 226 and 227 of the

Constitution has the powers to interfere with the orders of the Industrial Court, if such an order is found to be perverse or contrary to law or suffers from errors apparent on the face of the record. More so the impugned order is an order of interim nature. With this limited powers available with the High Court, it is necessary to examine whether the reliefs prayed for before this Court can be granted.

8. At Exh.I to the petition memo, the strength of workmen during the preceding 13 months i.e. from May 2003 to May, 2004 has been placed on record and it is contended that on an average the strength was 118. Unless the strength had fallen below 100 on an average during the preceding 12 months, the company's case could not come out of clutches of section 25 O of the ID Act, as urged by the learned counsel for the petitioner Union. It is well settled by this Court that an illegality on account of issue of notice of lay off or closure is curable **(The Premier Automobiles Ltd. and Others Vs. G.R. Sapre and Others, 1981 Lab. I.C. 221)**. Sub section 6 of section 25 O of the ID Act also states the consequences where the closure is effected without any application or on account of permission having been refused. In such circumstance, the closure of the undertaking shall be deemed to be illegal from the date of the closure and the workmen shall be

entitled to all the benefits under any law for the time being in force, as if the undertaking had not been closed down. Having regard to this statutory provisions and the liberty available to the respondent company to cure the illegality, if any, the consequences ultimately even if the complaint is decided in favour of the petitioner Union would be the payment of salary for few months as has been rightly argued by Mr. Cama, the learned senior counsel.

9. It was not proper for the Industrial Court to record a finding at the interim stage that the company's case was rightly covered under the provision of section 25 FFA proviso (a) (I) of the ID Act. The main issues as noted hereinabove will have to be decided during the trial of the complaint and the above complaint involves mainly legal issues, there should not be unwarranted delay in deciding the complaint finally, without being influenced by any of the observations made in the impugned interlocutory order. The fact remains that as on the day the notice dated 8.6.2004 was issued there were only seven employees on the rolls of the establishment at Taloja and whether the company was required to wait for another 12 months to issue closure notice as urged by Mr. Talsania, is an issue which will have to be considered and decided by the Industrial Court

and it would not be proper to record any findings on this issue as well. The view taken by the Industrial Court regarding prima facie case being not made out for granting any of the reliefs as set out in the application at Exh.U-2 and more so by taking into consideration the decisions rendered by this Court, does not warrant interference in the supervisory jurisdiction under Article 227 of the Constitution of India and therefore, this petition fails and the same is hereby rejected summarily. Ad-interim order stands vacated.

10. It is directed that the complaint (ULP) No. 161 of 2004 be heard and decided as expeditiously as possible and preferably within a period of six months from the receipt of writ from this Court. Both the sides expressed their willingness to co-operate with the Industrial Court for deciding the complaint within the stipulated period of six months. While decision of the Industrial Court is awaited, if any of the seven workmen approach the company with an application indicating their willingness to be absorbed in any other establishment, the same may be considered by the company on its own merits and subject to availability of vacancies.